

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

ALL ACTIONS

Judge Patti B. Saris

**CLASS PLAINTIFFS' MOTION TO POSTPONE SUMMARY
JUDGMENT HEARING ON TRACK 1 BY SIX BUSINESS DAYS**

Class plaintiffs hereby move this Court for a postponement of the summary-judgment hearing on Track 1 (Class 3) from October 26th to November 6, 2006 (the date currently reserved for the first day of trial on Track 1).

Put simply, plaintiffs' current schedule sandwiches the October 26th hearing date between other critical events that are imposed on the plaintiffs (but not the defendants). On October 24, 2006, plaintiffs are due to file responses to the 1,000 plus exhibits and 100 or so deposition designations served by defendants. On October 27, 2006, the plaintiffs are required to file all trial affidavits and findings of fact and conclusions of law. Thus, the October 26th hearing date is smack in the middle of two other critical dates that the plaintiffs are working round-the-clock to meet, but which defendants are not. Requiring some of plaintiffs counsel to travel to Boston to conduct a hearing at that time imposes an unfair obligation on plaintiffs that is not borne by defendants since defendants do not need to meet either the 24th or 27th dates since the Court has extended defendants' witness affidavits to a date after.

Moreover, all issues to be argued at the summary-judgment hearing are matters that the parties will argue during the trial and the Court has entered an order stating it will not rule on these motions prior to the trial. Subject to the courts discretion, parties can argue summary-judgment issues in their opening statements at the trial or during the trial itself. Thus, no party is prejudiced by the postponement of the October 26th hearing.

Plaintiffs have requested that the defendants assent to the postponement of the October 26th hearing, but at least one defendant has declined. Accordingly, in the interest of fairness and justice we ask for this modest postponement.

DATED: October 18, 2006.

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
One Main Street, 4th Floor
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Elizabeth Fegan
Hagens Berman Sobol Shapiro LLP
60 W. Randolph Street, Suite 200
Chicago, IL 60601
Telephone: (312) 762-9235
Facsimile: (312) 762-9286

Eugene A. Spector
Jeffrey Kodroff
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Kenneth A. Wexler
Jennifer Fountain Connolly
Wexler Toriseva Wallace LLP
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Marc H. Edelson
Allan Hoffman
Edelson & Associates LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Donald E. Haviland, Jr.
The Haviland Law Firm
740 S. Third Street, 3rd Floor
Philadelphia, PA 19147
Facsimile: (215) 392-4400
Telephone: (215) 609-4661

**CO-LEAD COUNSEL FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on October 18, 2006, I caused copies of **CLASS PLAINTIFFS' MOTION TO POSTPONE SUMMARY JUDGMENT HEARING ON TRACK 1 BY SIX BUSINESS DAYS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman